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**BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

***CONCERNING*
EXAMINING MANAGEMENT PRACTICES AND MISCONDUCT AT THE
TSA, PART I**

APRIL 27, 2016



Introduction

Chairman Chaffetz, Ranking Member Cummings, and members of the committee, thank you for the opportunity to speak with you regarding the Transportation Security Administration and the reported issues of misconduct, whistleblower retaliation, security violations, and lack of accountability pertaining to TSA's senior executives and the potential impact on the TSA mission. I am here today to share with you what I have seen firsthand as a member of the TSA senior leadership team (SLT) and as a victim of these reprehensible practices after confronting and reporting misconduct of top leaders. I am here because I believe TSA has major management challenges, which are imposing great risk of failure to perform its mission effectively, and could have serious consequences for U.S. national and economic security. It matters what leaders do and it matters what they do not do. Noted educational leadership scholars, Gruenter and Whitaker, have stated "The culture of any organization is shaped by the worst behavior the leader is willing to tolerate." In TSA, that worst has yet to be identified because the men and women of the Agency keep seeing examples of the worst being confronted by the media – not by TSA leadership – and there seems to be no bottom of this failed leadership abyss.

I would like to first start by telling you that the vast majority of the front line employees at TSA are professional and truly care about the important mission of the Agency. Most come in and do a great job every day, as you would expect and you never hear about that. The headlines you do hear about are the failed leaders and that is why I am here.

For the record, I am a career senior intelligence and security management executive. For the past 36 years, I have served successfully in all of my prior roles, including as a Senior Government Advisor / Career Senior Executive Intelligence Professional / Corporate Executive for Intelligence, Surveillance & Reconnaissance Director/ Military & Contractor Combat Operational Leader / Supervisory Special Agent / Senior Nuclear Security Specialist and a United States Marine Corps mustang officer for almost 21 years, from 1981 – 2002. I a disabled Marine veteran, and the one basic leadership principle that has been with me my entire adult life, is as a Marine, we do not lie, cheat or steal and we do not tolerate those that do. It is just that simple.

I am not a novice when it comes to the important matters we will discuss here today. Beyond the 36 years of leadership experience, I bring a scholarly practitioner view point. My Doctorate in Management focuses on applied research and expanding leadership within the field of executive organizational leadership. My field of study has been on crisis leadership in organizational crises. The integration of organizational management issues with technological considerations and the global environment, while considering the critical role of information technologies in all aspects of management practice has been a direct correlation to my executive leadership role at TSA. I am an expert in the areas of organizational integration. The application of critical thinking skills, or how to develop and manage high-performance teams, and how to analyze and evaluate organizations and their structures are all examples of what my terminal degree is about.

In addition, I have held a Top Secret SCI clearance for the entire 36 years of my service as an intelligence professional. This is important to note as I will be identifying security incidents and violations that have occurred at TSA and explain where TSA failed to act in a proper manner in this regard.

My Career Professional Status

I am in good standing with my agency. I am not pending any administrative action or investigation. I am here today by my own choice to inform you of the challenges facing TSA. I am a Senior Executive with verifiable year-after-year performance enabling organizational success, especially while at TSA.

I relay this information so that the Committee might better understand that the issues I raised at TSA were more than just mere misconduct. This is about the inability of TSA to focus on the mission due to the overwhelming EEO complaints and personnel issues brought on by failed leadership. The refusal to address or to hold senior leaders accountable is paralyzing this agency. As a member of the TSA senior leadership team, (SLT) I saw firsthand the lack of leadership at the highest levels of this agency.

TSA Leadership Imperative

In your role as an oversight committee for TSA, you should be alarmed and concerned with these issues because TSA employees are less likely to report operational security or threat relevant issues out of fear of retaliation from supervisors who fear further retaliation from their chain of command. NO ONE WHO REPORTS ISSUES IS SAFE AT TSA. This prevents the necessary organizational agility to respond to an evolving threat and enemies who are always adapting to exploit any real, potential or perceived opportunity to strike. This negates any organizational improvement process and prevents this agency from fulfilling its mandated mission of protecting the United States transportation system and economic well-being from threats.

Retaliation by TSA senior leadership is being used extensively and systematically, as recently reported by the media¹ and historically² acknowledged by the GAO 10-139 study in October 2009. There has been little or no improvement. Senior organizational leaders use retaliation as a means to silence those who would report violations, security concerns or operational issues by forcing employees into early retirement or resignations.³ No employee will be willing to report operational issues when even reporting fraud, waste or abuse, are reasons for TSA leadership to retaliate against employees. Senior leaders appearing before Congress stating they will correct this behavior or fix TSA should be held to a strict timeline or you will continue to get more platitudes and false narratives that say TSA is getting better but in reality that is simply untrue. I would bet that you have heard that in the last 30 days, yet there have been numerous media stories about whistleblowers and retaliation at TSA in the same 30 days. What I

¹ See March 14, 2016 Reveal article titled: "Besieged by misconduct, TSA sows culture of dysfunction and distrust" at <https://www.revealnews.org/article/besieged-by-misconduct-tsa-sows-culture-of-dysfunction-and-distrust/>

² <http://www.nbcnews.com/news/us-news/tsa-fails-identify-73-employees-terror-watch-lists-n371601>

³ See <https://www.dhs.gov/see-something-say-something/about-campaign> .

have not heard is any leader at TSA address those issues. Ostrich like leadership, ignoring these issues will not make it go away.

I never cease to be stunned by how many skilled leaders remain silent at critical moments of organizational challenges, when even the casual observer can see that the situation calls for the leader to speak out. I call this the “ostrich” dilemma paying homage to the pervasive (though false) notion that, in response to danger, these flightless birds bury their heads in the sand. It would appear that leaders have come to believe that if they do not respond in the midst of a leadership moment then they will somehow be less responsible for what unfolds in response to their silence. Nothing could further from the truth. I believe that is where we are today at TSA, no leader is speaking out to the workforce about these leadership challenges. These great voids in leadership, the vast openness of lacking factual dialogue from TSA leadership, is filled with speculation, critical and harmful discussions at all levels across all of TSA, from the HQs to the field locations. The crisis communication has been woefully inadequate and more damaging than the stories you see constantly in the press.

Trust in leaders is a social exchange. For employees, it goes beyond just mutual obligations, or showing up and doing their job. TSA employees will do what is expected when leaders do the same. That exchange denotes a high quality relationship. I am here to tell you that does not happen at TSA. A leader’s character is very important because the leader may have authority to make decisions that have a significant impact on employees, this in turn impacts the employees' ability to achieve his or her goals (promotions, pay, work assignments, training, etc). This perspective implies that employee’s attempt to draw inferences about the leader’s characteristics such as integrity, dependability, fairness, and ability and that these inferences have consequences for work behavior and attitudes. At TSA, when employees cannot trust their leaders, they cannot do their job.

I am concerned that TSA employees **RESPONSIBLE FOR TRANSPORTATION SECURITY, INTELLIGENCE AND ANALYSIS** fear their supervisors more than they fear a potential terrorist threat. No employee will adhere to the DHS public policy of “See Something – Say Something”¹ when the danger is greater from within the organization than it is from the outside. Senior leader misconduct and retaliation, if left unaddressed, will place the American public at a continued greater risk. Misuse and/or abuse of authority are directly correlated to the exact reasons that TSA continues to underperform.⁴

The America public, and Congress in its oversight role, should expect and demand that TSA work tirelessly to strengthen airport security; provide and train a competent screening workforce; prescreen passengers against terrorist watch lists; and screen passengers, baggage, and cargo. This includes surface transportation modes. The expectation there is no less important

⁴ See March 14, 2016 Reveal article titled: “Besieged by misconduct, TSA sows culture of dysfunction and distrust” at <https://www.revealnews.org/article/besieged-by-misconduct-tsa-sows-culture-of-dysfunction-and-distrust/>

TSA should continue to take steps to improve safety and security, by developing a strategic approach. This must include securing mass transit, passenger and freight rail, commercial vehicles, highways, and pipelines. TSA needs to establish security standards for transportation modes; and conduct threat, criticality, and vulnerability assessments of surface transportation assets, particularly passenger and freight rail. However, all of this predicated on a highly trained and motivated workforce, which right now does not trust its senior leadership.

Today, TSA lacks the senior leadership courage to make the necessary changes so that the agency can accomplish its mission. The TSA failed leadership, toxic environment and lack of accountability for those who have proven to do wrong has placed this agency in a perpetual recruiting and replacement model that is unsustainable for either efficiency or effectiveness. The inability, or unwillingness to act, even in the most heinous misconduct cases, sends a message to the entire workforce that senior leaders are not accountable and there is a double standard. The transient nature of this work force is debilitating. Even as a young, new leader in the Marine Corps 36 years ago, I learned that what you permit --- you promote. Senior organizational leaders are expected to make decisions, but even when TSA has concrete proof of misconduct, it fails to act, so there can be no reasonable expectation that any real leadership would be forthcoming when tough decisions are needed in operational matters, especially when the mundane administrative matters are not addressed with integrity. The lack of institutional, organizational and individual integrity prevents TSA from improving every day. There is no expectation of executive leadership setting the example, in any regard on any issue, at any time.

I was a member of the TSA Senior Leadership Team (SLT) senior executives at TSA Headquarters when we designed the TSA Code of Conduct. I had direct input and was part of the discussion with other senior leaders to ensure that the misconduct issues were addressed. I specifically, injected comments about integrity, being professional and reporting misconduct. At that time, I had no idea that I would eventually be the one reporting my SES peers and supervisor for misconduct. At the TSA HQs, there is a "go along to get along" mindset. When I reported misconduct, it was seen as a breach of etiquette rather than an act of responsible senior leadership. Much like the *Lord of the Flies'* story line, it is a choice between being attacked and attacking others. Senior leaders at TSA in my experience would rather have the focus on someone else rather than on themselves. So, silence is the predominant leadership trait at TSA HQs by the senior leaders followed only by complicity by not reporting misconduct. The TSA conduct of conduct states the following: As an employee, I will proudly serve to protect the traveling public. To this end, while on or off duty, I pledge that I will:

- Demonstrate integrity
- Be honest
- Be professional
- Be alert
- Obey all laws
- Report allegations of misconduct

From what I have seen or experienced, you would be hard pressed in any court of law, convicting the TSA Senior Leadership Team of these pledges. There are exceptions, but very few. For the most part, it is utter failure. I did all of these and was punished. I demonstrated integrity by telling the truth and refusing to lie, and was targeted, cleared and demoted. I was honest in my statements to all investigators with no measurable appreciation. I was professional, alert, obeyed the law and I am here today telling my story in allegiance to that pledge and others which govern my behavior.

I reported allegations of misconduct and senior leaders above me failed to act. Instead, their response was punitive; they reduced me two pay grades and my pay was immediately reduced, unlike others who have save pay, which is standard practice at TSA. This action was intended to publicly humiliate me by announcing my departure as the Deputy for the TSA Intelligence Office at a live HQs town hall broadcast to three external locations. They sought to make an example of me. The intent was to send a message to others that silence and conformity was not only required but expected, or else they would ruin your career, regardless of performance or history of career achievements.

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Failing forward in TSA is common, if you screw up, you move up. THIS IS WHY TSA HAS A MORALE PROBLEM AND CANNOT GET BETTER.

TSA Cannot Police Itself

Much like the justice system here in the United States, the perception has to be that it is fair to and accountable for everyone, that no one is above the rules or the entire system is a failure. Today, TSA in regards to leadership and accountability is that dreaded failure. Until there is a leadership cadre in place at TSA that has a leadership commitment to create an action plan for accountability by demonstrating the capacity to have the organizational agility to move this agency forward, you will continue to see TSA in the news as the failure it is reported to be. TSA has shown over years, and with multiple GAO studies and Congressional hearings that it is incapable or unwilling to improve. DHS is no better, and that's why we are the lowest rated federal agency in the federal government. Additionally, the Executive Resource Committee (ERC) is responsible for selection, assignment and directed reassignment for executives is currently incapable of being perceived as professional at this point. It is corrupted and needs to be moved out of TSA for a period of time. The ERC is where TSA executives have their pay set, their assignments made or directed reassignments decisions made as well.

Key critical elements of the organization have been compromised and are not effectively contributing to the overall success. Over the years, integrity creep has simply killed any real or

perceived credibility that major elements in this agency might have had; this includes the Office of Inspections (OOI), The Office of Professional Responsibility (OPR), and The Office of the Chief Counsel (OCC). These components, which should serve as a system of checks and balances instead is a system of assurances rubber-stamping bad management.

First, the TSA Office of Inspections, has been used as a blunt object meant to club employees into submission or force them out. When failed leaders purposely and falsely report employees for investigation, the Office of Inspections leadership, not employees, are willing partners to silence dissent or for those who would dare report misconduct, fraud, waste or abuse. Second, the TSA Office of Professional Responsibility has been used to issue letters and/or findings based on the results of investigation from OOI. And for the record, I do not believe that the leadership or the employees are in any way part of this are willing active willing partners in this, instead they are simply operating on good faith on the information that has been falsely provided to them by their leadership. However, this compromises the integrity of the process as they cannot dissent and deny the process from moving forward even if they wanted to, which therefore indicates that there is no independent thought or consideration. The facts have little or no bearing. Third, and most importantly, the Office of Chief Counsel is compromised in no less manner and is the least trusted in trio. Change must begin here. The insatiable desire to have every single case (from EEO to misconduct) end with a non-disclosure agreement (NDA) is a 100% indicator that TSA is at most hiding the leadership failures and at least preventing the agency from learning from mistakes that have been identified. For the employees perception is reality. The Office of Chief Counsel is viewed by TSA employees as corrupt and untrustworthy. There is not even an expectation, or false pretense, that this office will act in an unbiased manner. It is simply understood, and expected that you will not, cannot and should expect a fair share from this office.

Office of Intelligence & Analysis

The office, in which I served, deserves intelligence professionals to lead them. You would never put a program manager or program specialist in charge of the Federal Air Marshals, or the TSA attorneys or any other office, why would you continue to do it to the intelligence office at TSA?

TSA overall and OIA specifically, because of the fear from our leadership, is not currently capable of deterring, detecting, and disrupting threats against our aviation system. This is not only for the reasons you see in the papers today, but because of the lack of meaningful leadership in mission operations offices like OIA. I have only named four offices here today, but there are major employee morale issues across TSA, not just at TSA HQs, or one specific airport. This issue of failed leadership is systemic, it permeates all aspects and locations of TSA leadership, but it does start at the top. I was meant to be made an example of so that others who would dare to question the leadership at TSA would think again. Why would any employee risk informing any supervisor at TSA about bad news when they see so many others being punished for that exact thing? There is no leadership accountability and therefore TSA is not a high performing agency.

Securing the National Transportation Domain

TSA leadership over has told you,, and over, through a number of different testimonies, data calls and other information sharing efforts that TSA recognizes the current threat environment. You have been told that TSA employs an intelligence-driven, risk-based approach to secure U.S. transportation systems. You have been told that TSA uses a risk-based security strategy to deter, detect, and disrupt attacks on the nation's transportation systems and critical transportation infrastructure, while facilitating the movement of legitimate travel and commerce. You have been told that TSA must first better understand intelligence, as it drives our comprehension and assessment of that risk. You have been told that TSA uses risk and intelligence to make decisions on policy, operations, and countermeasures across TSA, while applying risk-based methods to best use existing resources in a manner that will help to minimize risk and ensure system resiliency. You have been told that TSA understands the importance in working closely with our stakeholders in aviation, rail, transit, highway, and pipeline sectors, as well as our partners in the law enforcement and intelligence community.

Impetus for Change

By any normal standard of evaluation, TSA has failed and continues to fail. The men and women on the front lines are not the cause of that failure, rather the very leadership intended to facilitate that success has become bloated, self-serving and insular. A critical examination of the recent complaints raised by me and other senior executives warrants a tactical pause in the conduct of TSA management actions. It is no small wonder that the directed reassignment memorandum went out only after a senior leader complained. It is no accident that a similar memorandum went out concerning SES bonuses. The real question is how many good leaders are left because of those directed reassignments being used as a weapon of choice to punish or silence those who report misconduct, or simply to get rid of an SES they did not liked, regardless of how they performed. I implore you to please examine the cases of those forced out to see the real impact of these acts of aggression. Some of the best and brightest left while some of the worst and potentially criminal stayed to continue the perpetration and duplication of inept management and leadership masquerading as skilled, capable and competent professionals.

TSA Senior Leadership

Current leadership has publicly proclaimed that the future success of TSA is linked to a commitment to a common set of values. These values are supposedly core values, such as integrity, innovation, and team spirit. All of which you will find everywhere in TSA except at the highest levels of TSA leadership. Platitudes and false narratives will no longer suffice to help this agency move forward, as the workforce has seen the actual mistreatment of those who would report misconduct and mismanagement. The age of mass or social media has also shown the current reporting on these topics which have hyper-linked the federal lawsuits, requests from Congress, and the actions of TSA leadership that follow that reporting. The employees see when deadlines are missed yet they have to adhere to them. They see when TSA leadership fails to recognize the authority of Congress providing oversight by obfuscating their responsibility to comply, or purposely delaying the answers to Congress, or sending an unprepared speaker to answer questions. The contempt for Congress by TSA leadership is easily translated into the same for employees to their failed leadership – all the while the mission of TSA is lost.

Simply stated: there is no trust in leadership, there is no focus on the mission, and no one believes that the HOS leadership is committed to excellence on any level.

Misconduct/Poor Leadership

I would like to draw your attention to four cases that I personally witnessed while serving as a Senior Executive at TSA:

- 1) I witnessed a fellow SES, a peer DAA, sexually harass a junior female employee and when I refused to lie, I was called a boy scout and put on his S*** list. He told me that if I was unwilling to lie for him, if the employee filed a complaint then he and the others would be unable to trust me and therefore could not work with me in the future. I had no idea how rampant the misconduct was, but I told the truth and reported his behavior to my supervisor, who's only response was to comment that this SES was harmless and not to worry about it. It was clear to me at this point that they were not taking complaints seriously nor was there any intention of doing the right thing.

The other three cases were when I reported SES misconduct in an SES preselection case, employee hazing, and lastly a series of security incidents and security violations. None of which were taken seriously. This is the modus operandi for TSA.

This was first reported in the GAO 10-139, on page 23, paragraph 2. More importantly, that negative failed leadership continues today. Because what was reported to you by GAO in October 2009, happened to me in October 2015. The exact same thing.

Conclusion

In conclusion, the toxic leaders at TSA are the individuals who, by virtue of their destructive behaviors and their dysfunctional personal qualities or characteristics, inflict serious and enduring harm on the individuals like me who report misconduct, and groups such as other TSA offices or future aspiring leaders, but sadly the most harm is done to the organization of TSA.

The current state of disarray at TSA will not just simply get better with time. It will continue to slowly decline and experienced professional employees will leave out of frustration or being targeted by failed leaders. Either way, TSA will not have the best of the best doing what was originally intended for TSA. There must be an accounting for the current problems that have been raised as issues with you, DHS OIG, OSC and within the federal lawsuits. TSA must clear the deck of these issues and prevent future complaints. There can be no forward movement until we reconcile the past. TSA has proven it is unwilling or incapable of thinking in an innovative fashion. Instead of addressing issues like how to vet the entire DHS work force or improve aviation security, or secure the rail or metro against current ongoing threats we are stuck dealing with the results of poor leadership. There has not been a major advancement or breakthrough at TSA in some time. I created one in OIA but the petty politics killed any possible momentum.

I thank this committee for the opportunity to appear before you. I know now that my time at DHS/TSA is done. However, I will not leave until this problem is fixed. Much like Cortez did when he went to the new world, I have burned my boats, there is no going back, and I have

committed to seeing this through. I could have easily "went along to get along and or shut up to move up" or even left TSA as so many others before me, but integrity is not situational. You either have it or you don't.

I remain committed to seeing this through to the end and stand by to support this effort in any way. I would like to Thank Congressman Sarbanes, my Congressman for contacting TSA on my behalf. Thank you again for your time today, and I look forward to answering any questions you have.



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Mr. Livingston is currently serving as a Senior Program Manager within the Office of the Chief Risk. In this role he, provides and supports leadership, vision, and direction for risk management activities across TSA by leading long-range strategic risk planning and risk management efforts; integrating risk management activities across all TSA functions; establishing common risk management standards, techniques, and tools; and ensuring alignment of individual office risk management efforts and strategic plans.

As a Senior Intelligence Expert for the Office of Naval Intelligence, Mr. Livingston championed efforts to collaborate across the Intelligence Community on issues of importance. He served as the primary command interface to external organizations, and evaluated and recommended state-of-the-art analytic capabilities to enhance ONI's analysis in support of command missions, functions, and tasks. He provided timely analytic leadership to ONI's senior leaders and communicated ONI's interests, equities, and requirements to other organizational leadership.

Before joining ONI, Mr. Livingston was a corporate executive. He has extensive private sector experience in operational support to wartime efforts in ISR and intelligence support to warfighters. He deployed to Iraq seven times over a two-year period almost 19 months in country leading combat patrols. His combat leadership roles focused on counter-IED and counter-sniper activities including direct combat patrols and leadership for a team of civilian, military, and contract warfighters in pursuit of enemy combatants. He is a graduate of numerous advanced intelligence analysis, briefing and critical thinking courses from the intelligence community.

Mr. Livingston's past work includes service to his country as a United States Marine Corps Intelligence Officer, Federal Law Enforcement service as a Supervisory Special Agent at the Pentagon, Senior Nuclear Reactor Specialist at the US Nuclear Regulatory Commission, and Director of Corporate Intelligence Programs, Northrop Grumman.

Mr. Livingston's 36 years of government service include 21 years of military service with assignments at US Special Operations Command, JSOC, DEVGRU, and US Forces Korea, and service with all three elements of the Fleet Marine Forces—ground, air, and logistics—and as a USMC Drill Instructor. He has served as an enlisted Marine, NCO, SNCO, Warrant Officer, LDO, and Commissioned Officer. Military awards include Defense Meritorious Medal and numerous personal and service awards. He is a graduate of University of Maryland, University College, where he earned a BS in Psychology, an MSc in Human Resource Management, and a MBA, and a Doctorate in Management.

Mr. Livingston has received several awards and meritorious citations, including US Navy Civilian Superior & Civilian Meritorious Service Medals, two CIA JMUC, and the Director of National Intelligence Exceptional Achievement Medal, was nominated for the George Washington Spymaster Award in 2014. He is a graduate of the Federal Executive Institute's (FEI) Leadership for a Democratic Society, and graduate of the ONI Senior Executive Development Program.

Mr. Livingston is married (Naomi) and has three adult children, Trent , Alyssa, and Jordan.